IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 4112 OF 2004

Tariq Mubarak Ali Sheikh ... Applicant

versus

The State of Maharashtra ... Respondent

...

Mr. Vijay Hiremath, for the Applicant.

Mr. A.S. Gadkari, A.P.P., for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

26th October 2004

P.C.:

. Heard Counsel for the parties. Perused the record. Two contentions have been raised. According to the Applicant, there is infraction of section 50 of the N.D.P.S.Act as the Applicant was not apprised of the fact that he will be taken to the "nearest" gazetted officer for the purpose of carrying out the search of his person. Besides, the other grievance made before this Court is that the Applicant was not informed of his right to be taken before the gazetted officer

within the meaning of section 50 of the Act. Whereas, the search was conducted by the raiding party, which was headed by the Police Inspector, who happened to be a gazetted officer. Reliance is placed on the observations made by the Apex Court in the decision reported in A.I.R. 2000 S.C. 2790 in the case of Ahmed v. State of Gujarat, wherein the Apex Court had occasion to observe that merely because the officer going to search happens to be a Gazetted Officer, that cannot be said to be compliance of section 50 of the Act. To get over this contention, the learned A.P.P. contends that in the present case, the Applicant has been apprised of his right and it is not a case of non-compliance of section 50 of the Act. Besides, reliance is placed on the recent decision in the case of Prabha Shankar Dubey v. State of M.P., reported in (2004) 2 S.C.C. 56 to contend that the Court has to consider whether there is substantial compliance of section 50 of the Act. The present application is for relief of grant of bail. It is not in dispute that the contraband recovered during the search is only 300 grams of charas and cash amount of Rs. 150/-. The question as to whether there is substantial compliance of

section 50 of the Act is a matter which will have to be established at the trial. Reliance placed on the decision of the Apex Court in the case of Ahmed v. State of Gujarat (supra) is inapposite, because, it is rightly contended that the same is not the ratio of the decision, as the issue in that case was that the accused himself had offered for being taken to the Magistrate for being searched, but the police declined that to him on the ground that it was not necessary. It is not a decision on the issue when the raiding party is headed by a gazetted officer, whether it is necessary to take the accused to the nearest gazetted officer. Be that as it may, as mentioned earlier, whether there is substantial compliance of section 50 of the Act is a matter for trial. In the circumstances, it is not possible to proceed on the assumption that the Applicant is not guilty of the alleged offence. Besides, I find substance in the reason recorded by the Court below that if the Applicant is released on bail, in all likelihood, he may jump the bail, as he is permanent resident of Sudan, a foreign country, and has no fixed place of abode in India. Besides, the likelihood of the Applicant of tampering the prosecution evidence

cannot be ruled out.

. Hence, this application is dismissed. The Applicant is stated to be in custody since August 2003. In the circumstances, the trial Court is directed to expedite the hearing of the case.

(A.M.KHANWILKAR,J.)